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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/879,187	06/13/2001	Kurt Ryl	39021-172671	3997

7590

05/06/2004

VENABLE, BAETJER, HOWARD & CIVILETTI, LLP
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Washington, DC 20043-9998

EXAMINER

MILLER, EDWARD A

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 05/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of Abandonment

Application No.

09/879,187

Examiner

Edward A. Miller

Applicant(s)

RYF ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 21 October 2003.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☒ A reply was received on 21 November 2003 but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:

See next page.

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

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1. The replies filed on November 21, 2003 and January 28, 2004 are not fully responsive to the prior Office Action for reasons set forth below. Since the period for reply set forth in the prior Office action has expired, this application will become abandoned unless applicant corrects the deficiency and obtains an extension of time under 37 CFR 1.136(a).

The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. In no case may an applicant reply outside the SIX (6) MONTH statutory period or obtain an extension for more than FIVE (5) MONTHS beyond the date for reply set forth in an Office action. A fully responsive reply must be timely filed to avoid abandonment of this application.

2. Since the maximum extension of time permissible under 37 CFR 1.136(a) has expired, this application stands abandoned for failure to properly reply, as set forth below.

3. In Paper No. 11, mailed October 21, 2003, applicants were required to complete their response, and were given a one month timer period to complete that response. In accordance with MPEP 714.03, in pertinent part, "once an inadvertent omission is brought to the attention of the applicant, the question of inadvertence no longer exists. Therefore, a second Office action giving another new (1 month) time period to supply the omission would not be appropriate under 37 CFR 1.135(c)." Further, 37 CFR 1.135(b) and 1.111(b) were not merely quoted by number, but were copied and set forth in the action, page 2, paragraph 1, to inform applicants.

4. The ostensible amendments to claims 17-18, as to which applicants maintain their traverse or the restriction requirement, are not reasonably responsive to the rejections under 35 USC 112, nor are the rejections under 35 USC 112, 2nd paragraph suitably argued. The term "powder" was stated to be a problem in the rejection as to many claims including claim 14, e.g., and which term

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"powder" was deleted at the end of claim 14, and deleted from claims 15 and 16. Thus, applicants acquiesced as to the rejection in this aspect. However, this identical term "powder" was inserted into claim 17, and retained in claim 17. Thus, the reply including arguments and amendments to the claims cannot reasonably be found to be complete or bona fide. Further, there is no argument at all for claim 17 as to 35 USC 112, 2nd paragraph, and the remarks about claim 18 do not address the substantive content of the rejection of all the claims for indefiniteness. "Comprising" in claim 18 does not address any omitted claim element from claim 18.

5. Applicants filed an amendment on January 28, 2004, in which they stated that "This AMENDMENT is presented to be considered in conjunction with previous response filed in reply to Paper No. 11." This is taken to mean that applicants intended the amendment to be part of the reply to Paper No. 11. However, this was not presented within the one month time for response of Paper No. 11. Further, there was no request for an extension of time, nor any authorization to charge a deposit account on applicants' behalf. Thus, this response is untimely. As the maximum extension time of up to 6 months from October 28, 2003, under 37 CFR 1.136(a), has expired, no time remains within which to complete the response, e.g., by an extension of time.

6. Any inquiry concerning either this or an earlier communication from the Examiner should be directed to Examiner Edward A. Miller at (703) 306-4163. Examiner Miller may normally be reached Monday-Thursday, from 10 AM to 7 PM.

If attempts to reach Examiner Miller by telephone are unsuccessful, his supervisor Mr. Carone can be reached at (703) 306-4198.

If there is no answer, or for any inquiry of a general nature or relating to the application status, please call the Group receptionist at (703) 308-1113.

Miller/em
May 3, 2004



EDWARD A. MILLER
PRIMARY EXAMINER